

Tentative Rulings
July 26, 2011
Department 12

HINCKLEY VS. AREL, ET AL
Case Number: 169326

Tentative Ruling on Motion for Reconsideration: CCP section 1008(a) requires that a motion for reconsideration be based on “new or different facts, circumstances, or law” than those before the Court at the time of the original ruling. A party seeking reconsideration must also provide a satisfactory explanation for the failure to produce the evidence at an earlier time. Garcia v. Hejmadi (1997) 58 Cal.App.4th 674. The burden under section 1008 “is comparable to that of a party seeking a new trial on the ground of newly discovered evidence: the information must be such that the moving party could not, with reasonable diligence, have discovered or produced it at the trial.” New York Times Co. v. Sup. Ct. (Wall St. Network, Ltd.) (2005) 135 Cal.App.4th 206, 212-213.

By the present motion, Defendants/Cross-Complainants James E. Reed and Nichols, Catterton, Downing & Reed, Inc. (“Defendants”) seek reconsideration of the Court’s ruling dated June 14, 2011, on Plaintiff’s Motion for Summary Adjudication and Defendants’ Motion for Summary Judgment. The motion is made on the ground that new or different facts have been obtained. Specifically, Defendants contend that Plaintiff’s deposition transcript evidences that the written contingency fee agreement was converted after the contingency had occurred to a fixed fee amount for services rendered, and consideration of such evidence would result in a different ruling on the summary judgment motions. Defendants offer that the deposition transcript did not become available until after the May 24, 2011 hearing.

In Jones v. P.S. Develop. Co., Inc. (2008) 166 Cal.App.4th 707, the court held that deposition testimony obtained after a motion for summary judgment was granted was not ground for reconsideration where there was no showing why the deposition could not have been taken earlier. Here, Defendants have failed to offer any explanation whatsoever, as to why the transcript of Plaintiff’s deposition, taken on April 27, 2011, could not, with reasonable diligence, have been obtained prior to the May 24, 2011 hearing. Absent an adequate explanation, the Court does not find that the statutory requirement of reasonable diligence has been satisfied, and the motion for reconsideration must be denied.

Even assuming for the sake of argument that the motion for reconsideration were to be granted, the Court would reaffirm its prior ruling. The submitted portions of Plaintiff’s deposition transcript do not evidence that Plaintiff admitted that the contingency fee contract was converted to a fixed fee contract, as argued by Defendants. It merely shows that Hinckley acknowledges that she agreed to pay Defendants \$230,000 instead of \$270,000. There is no evidence that she agreed to a “fixed fee agreement” separate and distinct from the contingency arrangement. To the contrary, she testified more than once that she did not know where the \$230,000 figure came from, and her testimony is built upon a concern that the contingency fees requested were too high and she wanted a reduction. The testimony does not conclude an acknowledgement of a fixed fee agreement -as opposed to merely an agreed upon reduction of the contingency fee amount- so as to create a triable issue of fact that a novation occurred.

The motion is denied.